

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

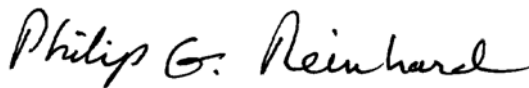
The United States of America,	)	
for the use and benefit of	)	
Sunlee Development, L.L.C., et al.,	)	
	)	Case No. 10 C 50067
Plaintiffs,	)	
	)	
vs.	)	
	)	Judge Philip G. Reinhard
Alacran Contracting, LLC, et al.,	)	
	)	
Defendants.	)	

**ORDER**

After conducting an evidentiary hearing on October 11, 2017, Magistrate Judge Johnston, on March 13, 2018, entered a report and recommendation [269] that plaintiff's claim under the Miller Act (Count I) be barred as untimely and that Liberty Mutual's motion in limine [263] be denied. The report and recommendation found plaintiff failed to meet its burden of proving the action was brought no later than one year after the day on which the last labor was performed or material supplied by the person bringing the action as required by 40 U.S.C. § 3133(b)(4). Plaintiff bears this burden because bringing suit "within the prescribed time is a condition precedent to the right to maintain the action." U.S. for Use and Benefit of PRN Associates, Inc. v. K & S Enterprises, Inc., No. 1:04-cv-0470-DFH-JMS, 2007 WL 925267, \*4 (S.D. Ind. March 27, 2007) (Hamilton, J.), quoting, U.S. for Use and Benefit of Material Service Division of General Dynamics Corp. v. Home Indemnity Co., 489 F.2d 1004, 1005 (7<sup>th</sup> Cir. 1973). Objections to the report and recommendation were originally due March 27, 2018. Magistrate Judge Johnston subsequently extended the time for filing objections until May 1, 2018 [278]. No objections have been filed. The court has reviewed the record and accepts the report and recommendation. The court finds plaintiff's claim under the Miller Act (Count I) was untimely filed and, therefore, is barred. Liberty Mutual's motion in limine [263] is denied. Plaintiff is ordered to file a status report on or before May 16, 2018 informing the court as to its intentions concerning seeking a default judgment against Alacran Contracting, LLC ("Alacran"). An order of default [123] previously was entered against Alacran. This appears to be the only matter remaining in this case.

Date: 5/02/2018

ENTER:



United States District Court Judge

Electronic Notices. (LC)